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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Preemption of Local Zoning Regulation)
of Satellite Earth Stations)

IB Docket No. 95-59

In the Matter of)

Implementation of Section 207 of the)
Telecommunications Act of 1996)

CS Docket No. 96-83

Restrictions on Over-the-Air Reception Devices)
Television Broadcast Service and)
Multichannel Multipoint Distribution Service)

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Introduction

Pursuant to the Further Notice of Proposed Rulemaking (herein the "Further Notice") released August 6, 1996, in the above-captioned proceedings, the Reston Home Owners Association (herein "Reston") submits the following Comments in response to the request by the Federal Communications Commission (herein the "FCC") for further comment on the issues relating to whether, and if so how, to extend 47 C.F.R. Section 1.4000 (herein the "Rule"), issued pursuant to Section 207 of the Telecommunications Act of 1996 (herein "Section 207"), to situations in which antennas may be installed on common property for the benefit of one with an ownership interest or on a landlord's property for the benefit of a renter.

Comments

As the Community Associations Institute pointed out in its Comments submitted in CS Docket No. 96-83 (herein "CAI comments"), in a planned community such as Reston, common area property is not property owned in common by the individual owners or members within the

community. Rather, it is property owned by the homeowners' association, which that association manages and controls for the benefit of all its members. Unlike in the case of a condominium, the individual members of the homeowners' association do not have an ownership interest in such property. As the owner of such property, it is the homeowners' association, not the individual members of the association, which is responsible for its maintenance, and it is the homeowners' association, not the individual members of the association, which will be held liable if the common property is not maintained and injury or damages occur as a result of any lack of maintenance.

Extending the Rule as proposed would interfere with established private property rights, violate the property owner's Fifth Amendment rights, and result in an unconstitutional taking of private property without just compensation. **An individual member of the homeowners' association has no more a legal right to make an alteration (including the installation of antennas) to the common property owned by the homeowners' association than that member does to make an alteration to property belonging to his or her next door neighbor.** The language of Section 207 does not require, nor did Congress intend by such language, the preemption of private property rights. Reston agrees with CAI that "Section 207 only authorizes preemption of 'restrictions,' not fundamental property law relationships...[and that] to hold otherwise would exceed the statutory mandate of Congress" (See CAI comments, pp. 13-14).

In its Further Notice, the FCC specifically asked for information on the practical implications were it to extend the Rule to common area owned by a homeowners' association. Reston generally agrees with CAI regarding the problems which likely will result if the FCC does not permit the community association to restrict or prohibit installation of antennas on common

property. (See CAI comments, pp.15-18). In Reston, for example, the homeowners' association owns over 1,000 acres of common area. This common area takes many different forms-- from unimproved land left in its natural state to active recreation areas with pools, bathhouses, tennis courts, tot lots, exercise trails, etc. The task of managing and maintaining Reston's common areas and the competing demands for such areas can not be understated. As we pointed out in our Comments submitted in IB Docket No. 95-59, the Reston community has approximately 21,000 residential units housing almost 60,000 people. Were the FCC to decide to extend the Rule to common area property owned by the homeowners' association (and withstand a court challenge), that task would become overwhelming, if not completely unmanageable. In addition, and not insignificantly, the liability exposure to the homeowners' association would increase dramatically, with the additional costs of insuring the association against such liability likely skyrocketing.

The list of questions which the FCC would need to address in its Rule would be endless. For example: Which members would be permitted to install an antenna on which common area? Would the association be permitted to implement an administrative process, or would that be an "unreasonable delay" under the Rule? How could competing demands for the same area be resolved within the parameters of the Rule? First come, first serve? Would an individual member's "right" to install an antenna transfer to a subsequent owner of his or her property, or would the new owner be required to "go to the end of the line?" Would the association be permitted to completely exempt certain common areas from the Rule? Many of these and other questions will be difficult if not impossible to answer.

Conclusion

It should be clear that from all perspectives--legal, technical, and practical--Section 207 cannot and should not be interpreted, nor should the Rule be extended, to permit the installation of antennas on property not exclusively owned and controlled by the antenna user. **We strongly urge the FCC to clarify that 47 C.F.R. Section 1.4000 and, for that matter, any other rule which may be promulgated pursuant to Section 207, is not intended to grant to individual viewers rights in and to property which that individual does not own.**

The Reston Home Owners Association appreciates this opportunity to provide comments to the FCC on the important issues raised in its Further Notice.

Respectfully submitted,



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